IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.983 OF 2004

1. Ms.Saakshi Thaakur, of Bombay, Indian Inhabitant carrying on her business in the firm name and style of Saakshi Video Graphics, having her office at 708, Adarsh Nagar, New Link Road, Oshiwara, Jogeshwari (West) Mumbai 400 102.

2. Saakshi Video Graphics a firm having its office at 708, Adarsh Nagar, New Link Road, Oshiwara, Jogeshwari (West), Mumbai 400 102. ...Petitioners

Versus

1. The State of Maharashtra to be served through Public Prosecutor, High Court, Bombay.

3. M/s.Ajay Pictures, a firm having its office at 1603, J.H.Building, 2nd floor, Bhagirath Palace, Delhi 110 006 through its Proprietor Shri Sanjay Bhatia residing at 181, Four Storeys D.D.A. Flats, Vishal Market, New Delhi 110 027. ...Respondents

Mr.A.M.Saraogi for Petitioner

Ms.P.H.Kantharia, APP for State

Mr.R.P.Singh with Rajesh Harnal for Respondent no.2

CORAM : R.M.S.KHANDEPARKER &
P.V.KAKADE, JJ.
DATE : 28TH JANUARY, 2005.

ORAL JUDGMENT : (Per Khandeparkar, J.)

1. Heard the learned advocates for the parties. Perused the record.

2. Rule. By consent, the rule is made returnable forthwith.

3. The petitioners challenge the process issued under Section 138 of the Negotiable Instruments Act, (hereinafter called as "the said Act") by the Chief Metropolitan Magistrate, Delhi on the ground of lack of jurisdiction to the said Court, as according to the Petitioner no cause of action has arisen within the territorial limits of the jurisdiction of Chief Metropolitan Magistrate at Delhi and material placed on record by the Petitioners in this Petition disclose that the entire cause of action, if any, has arisen within the jurisdiction of the Court at Mumbai and in that case

the proceedings could lie only in the Court at Mumbai.

4. The complaint under Section 138 of the said Act came to be filed in March 2003 in the Court of 6th Metropolitan Magistrate, at Delhi, against the petitioners alleging failure on the part of the Petitioners to pay the amount of rupees six lacs despite of dishonour of two cheques for the said amount, which were issued by the petitioners in favour of the respondent No.2. The cheques were dated 15.1.2003 for Rs.3 lacs each and they were presented for encashment in ICICI Bank, Chandni Chowk, Delhi, however, they were returned being dishonoured on the ground that the payment was stopped by the drawer of the cheques. Consequently a notice dated 7.2.2003 came to be issued under Registered A.D Post as well as Under Certificate of Posting to the petitioners, however, the petitioners did not comply with the said notice nor paid the said amount. The Respondent no.2 therefore, filed the said complaint on 22.3.2003 complaining that the two cheques were handed over to the Respondent No.2 at Delhi, the same were presented for encashment with their bankers at Delhi, and therefore, cause of action for filing the complaint had arisen at Delhi.

5. Placing reliance upon the decision of the Supreme Court in the matter of **Navinchandra N.Majithia vs. State of Maharashtra reported in AIR 2000 Supreme Court 2966** and referring to a letter dated 11.6.2003 stated to have been issued by the partner of the Respondent no.2, it was sought to be contended on behalf of the petitioners that the so-called cause of action for filing of the complaint under Section 138 of the said Act was artificially created cause of action and considering the same no complaint could have been filed and certainly not at Delhi, and being so, this Court in exercise of powers under Article 226 of the Constitution of India, shall either quash the proceedings initiated by filing the said complaint or transfer the said proceedings to a Court at Mumbai. The learned advocate appearing for Respondent no.2 on the other hand placing reliance in the decision in the matter of **K.Bhaskaran vs. Sankaran Vaidyan Balan and Anr. reported in 1999 Cri.L.J. 4606** submitted that the dishonour of the cheque on presentation thereof to the bankers at Delhi having occurred within the territorial limits of the jurisdiction of the Court of Chief Metropolitan Magistrate at Delhi and even the notice having been

issued from Delhi, the cause of action for the purpose of filing the complaint had arisen within the jurisdiction of the said Court, and therefore, no fault can be found with the respondent for having lodged the complaint in the said Court, nor there is any case for transfer thereof to the Court in Mumbai. The decision in K.Bhaskaran's case (supra) is however is sought to be distinguished by the learned advocate for the petitioners by contending that the said decision was duly considered in Navinchandra Majithia's case (supra), besides, that it is only in case of difficulty in ascertaining the exact place of cause of action that discretion can be exercised by the complainant in the matter of choosing the place for filing the complaint and not otherwise.

6. It is well settled law that in order to ascertain as to whether the court has jurisdiction to entertain the complaint or not, two things are primararily to be considered, firstly as to whether the complaint discloses the facts constituting the offence for which the opponent is sought to be prosecuted and secondly whether such an offence is disclosed to have occurred within the territorial limits of the

jurisdiction of the court in which the complaint is lodged. Equally it is also settled that if the complaint itself discloses an offence, this court should not embark upon an inquiry as to genuineness of the allegations made in the complaint or whether those allegations were likely to be established on evidence or not. In that regard one can safely rely upon the decision in the matter of **Mahavir Prasad Gupta and Anr. vs. State of National Capital Territory of Delhi and Ors. reported in (2000) 8 SCC 115**.

7. The complaint in the case specifically alleges that the petitioners had issued two cheques dated 15.1.2003, each of the value of Rs.3 lacs, drawn on Punjab and Maharashtra Co-op. Bank Ltd., Mumbai and they were presented by the respondent No.2 for encashment with its bankers viz. ICICI Bank, Chandni Chowk, Delhi, whereupon the same were returned dishonoured with remarks "the payment stopped by drawer". Pursuant to dishonour of the said cheques, the petitioners were informed about the same and a notice dated 7.2.2003 was issued and sent under Registered A.D. Post as well as under Certificate of Posting to the Petitioners. The Petitioners, however, failed to comply

with the said notice and therefore, the Respondent No.2 were compelled to file the said complaint. Para 14 of the said complaint deals with the issue regarding jurisdiction of the concerned Court to entertain the complaint, which reads thus :-

> "14. That the respondent no.2 had handed over aforesaid two cheques to the complainant at Delhi, the same were presented for encashment by the complainant with its bankers, at Delhi, cause of action for filing present complaint has accrued at Delhi, within the jurisdiction of P.S.Chandni Chowk, Delhi, hence the Hon'ble Court dealing with cases, pertaining to P.S.Chandni Chowk, Delhi, has jurisdiction to try and decide present complaint."

8. The above averments in the complaint prima facie disclose a clear case for prosecution of the drawer of the cheques at Delhi under Section 138 of the said Act, since the allegations disclose issuance of the cheques by the drawer, tender of the said cheques to the respondent no.2 at Delhi, presentation of said cheques for encashment at Delhi, dishonour of the said cheques

being at Delhi, the dishonour being on account of stoppage of the payment by the petitioners, dishonour being intimated to the drawer from Delhi, and failure on the part of the drawer to comply with the said notice and/or to pay the amount within 15 days from the receipt of the said notice. Indeed, the complaint ex-facie discloses the presentation of the cheques, dishonoured thereof, and intimation regarding the same having been done at and from Delhi. Obviously, therefore, the Metropolitan Magistrate, at Delhi who is empowered to entertain the complaint under Section 138 of the said Act in relation to the offences committed and the cause of action arisen at Delhi, has jurisdiction to deal with the complaint in question filed by the respondent no..2.

9. Our attention is drawn to a letter dated 11.1.2003 while contending that the cause of action disclosed in the complaint is artificially created cause of action. Undoubtedly the said letter discloses a statement to the effect that the signatory of the said letter would not encash the said cheque or demand draft until final deal is completed in respect of the films mentioned in the said statement. It is sought to be argued that it is an undisputed document and therefore,

once such undisputed statement ex-facie discloses the solemn assurance that the cheques in question would not be encashed till the final deal is completed and the complaint nowhere discloses that the final deal was completed, it apparently discloses that the alleged cause of action was artificially created one. At the outset, it is to be mentioned that while considering the issue relating to the jurisdiction of the court to entertain a complaint and to issue the process against the opponent named in the complaint, including a complaint in a case under Section 138 of the said Act, what needs to be seen, are the allegations in the complaint filed by the complainant and the supporting materials placed by the complainant before issuance of the process. In case the opponent has any material which can dislodge the case of the complaint or that it can establish the complaint to have been filed with any bad intention, certainly the opponent would be entitled to produce such materials before the Magistrate issuing the process in defence to the process issued against him but High Court while dealing with the petition against issuance of process by the Magistrate would not look into any material, other than those which were available before the Magistrate while issuing the process.

Undoubtedly in a given case where the materials apparently make out a case of abuse of process of the Court by the complaint, certainly nothing may prevent the High Court in considering such materials, even beyond those which were placed before the Magistrate. But in a case where it needs appreciation of various facts or in a case where it requires to decide the genuineness of a statement in a document sought to be produced by the opponent alongwith the petition in the High Court, certainly adjudication of such an issue is not possible in writ jurisdiction. In case, the opponent is able to disclose that any relevant document was suppressed by the complainant before issuance of the process, certainly the opponent is entitled to place such material before the Magistrate but in case where the relevancy and the genuineness of such a document is itself in doubt or disputed, certainly the adjudication of such an issue is not possible in the writ jurisdiction. Being so, all such points can very well be raised by the opponent before the Magistrate before whom the complaint is pending, however, that would not entitle the opponent to invite this court to invoke its writ jurisdiction for interference in such complaint at this stage.

10. It is also to be noted that the document dated 11.1.2003 in respect of which it is sought to be argued that the same is undisputed document, it is pertinent to note that the affidavit in reply filed by the respondent no.2 clearly discloses that the genuineness of the said document is clearly disputed while denying the signature of the respondent on the said document. Undoubtedly, whether it is really issued by the respondent no.2 or not will have to be gone into and such an exercise is certainly permissible in the court of facts and not in writ jurisdiction.

11. The Apex Court in the case of K.Bhaskaran (supra) while dealing with the question regarding the territorial jurisdiction of the court to try offence under Section 138 of the said Act has held thus -

> "The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. Following are the acts which are components of the said offences : (1) Drawing of the cheque, (2) Presentation of the cheque to the bank, (3) Returning the cheque

unpaid by the drawee bank, (4) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) Failure of the drawer to make payment within 15 days of the receipt of the notice."

"It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at 5 different localities. But concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Act. In this context a reference to Section 178(d) of the Code is useful. It is extracted below :

> "Where the offence consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas."

Thus it is clear, if the five different acts were done in five different localities any one

> of the Courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act. In other words, the complainant can choose any one of those Courts having jurisdiction over any one of the local areas within the territorial limits of which any of those five acts was done."

12. It is thus clear that the Apex Court in no uncertain terms has made it clear that it is for the complainant to decide as to where the complaint should be filed in cases where the cause of action arises in different localities. Assuming that in the case in hand, the cheques were issued at Mumbai, undoubtedly they were presented for encashment at Delhi. The factum of dishonour of the said cheques was revealed to the respondents at Delhi. The notice informing about the dishonour of the cheques was issued from Delhi. Being so, considering the acts narrated at Item nos.2, 3 and 4 in the decision of the Apex Court quoted above and applying the same to the case in hand, it is evident that the cause of action in the case in hand had arisen at Delhi and therefore, the court at Delhi has

jurisdiction to entertain the complaint.

13. As regards the second ground of challenge which pertains to artificial creation of the cause of action, as already observed above the argument is based solely upon the letter dated 11.1.2003. As already observed above the genuineness of the said document is yet to be established, and therefore, it is too premature to hold that whatever stated in the said document is a statement of truth or that it was actually stated by the respondent no.2. The said issue will have to be adjudicated and decided in the course of the trial.

14. The decision of the Apex Court in Navinchandra Majithia's case (supra) has absolutely no application to the case in hand. That was a case wherein the issue which was considered by the Apex Court was regarding the extent of jurisdiction of the High Court under Article 226 of the Constitution of India. Undoubtedly the decision in K. Bhaskaran's case (supra) was also considered by the Apex Court in the said decision. While referring the decision in K.Bhaskaran's case (supra) it was observed by the Apex Court in para 40 of the said decision in Navinchandra's case (supra) that -

> "This Court further held that Section 178 of the Criminal Procedure Code suggests that if there is uncertainty as to where, among different localities, the offence would have been committed the trial can be had in a court having jurisdiction over any of those localities. The provision has further widened the scope of by stating that in case where the offence was committed partly in one local area and partly in another local area the court in either of the localities can exercise jurisdiction to try the case."

Obviously therefore, the Apex Court has reiterated its decision in K.Bhaskaran's case (supra) that whenever cause of action arises in different localities, the court in every such locality will have jurisdiction to entertain the complaint and the complainant at his option can file the complaint in any one of such Courts.

15. Referring to the contents of paras 13, 14, and 15 of Navinchandra's decision, it was sought to be argued that considering the fact that the cheques were

issued in Mumbai and the dealings which took place in relation to the transaction between the parties were also held in Mumbai, the cause of action, if any, therefore, had arisen within the territorial limits of Court at Mumbai, and therefore only the Court at Mumbai will have jurisdiction and therefore, in exercise of powers conferred under Article 226 of the Constitution, it would be a fit case to transfer the proceedings at Mumbai, as the observations made in relation to the lodging of FIR in paras 13, 14 and 15 of the decision of Navinchandra's case would equally apply to the proceedings initiated in the Court by way of complaint. Apart from mere submission in this regard, the learned advocate has not been able to make good his submission by referring to the facts of the case in hand or any provision of law or even judicial pronouncement in that regard. That apart the proceedings prior to the cognizance being taken by the court and during the pendency of investigation by the police cannot be equated with the proceedings before the court after cognizance of the offence by the court. Investigation by the police cannot partake the nature of adjudication of the dispute by the court. The decision in Navinchandra's case was in relation to the issue

canvased pertaining to the lodging of FIR in one State while petition for quashing was filed in another State as it was held that in cases where the lodging of FIR in one State is itself under challenge before High Court in another State and the petition filed in that regard discloses major portion of the facts leading to the lodging of FIR had taken place within the territorial limits of the Court wherein the petition is filed, merely because the FIR is lodged in different State, that by itself would not oust jurisdiction of the court in which the petition is filed, to look into the matter. The said ratio cannot be applied to the cases relating to the issue regarding absence of jurisdiction to the court to entertain the complaint under Section 138 of the said Act.

16. Similar view was taken by another Division Bench of this Court to which one of us, (Khandeparkar, J.) was party, in unreported decision in the matter of **Mr.Devidas Sharma vs. M/s. Tata SSL Ltd. and Ors. in Criminal Writ Petition No.545 of 2004 delivered on 24th June, 2004.**

17. It is also pertinent to note that the

respondents have made a categorical statement in the complaint that pursuant to the dishonour of the cheque, a notice as required under the law was issued on 7.2.2003. The notice was sent to the petitioners under Registered A.D.Post as well as Under Certificate of Posting. The fact of issuance of such notice is not in dispute. However, the petition is totally silent as to whether the petitioners had replied to the said notice and whether the points which are now sought to be raised were in fact were stated in such reply. Inspite of repeated query in that regard with the learned advocate for the petitioners, no satisfactory reply is forthcoming. The failure in that regard on the part of the petitioners, though may not come in the way of the petitioners in rasing of the necessary defence in answer to the complaint, certainly the same prima facie discloses the contentions now sought to be raised being after thought. Undisputedly this observation is purely prima facie observation only to consider whether this court needs to interfere in the matter in exercise of writ jurisdiction. On this count also certainly interference by this court in the matter is not warranted.

18. For the reasons stated above therefore, there is no case made out for the transfer of the proceedings from the Magistrate Court at Delhi to the Court at Mumbai. In fact there is no prayer in the petition for quashing of those proceedings, however, we find that no case is made out even for such a relief. For the reasons stated above, therefore, the petition fails and is hereby dismissed. The rule is discharged with costs.

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(R.M.S.Khandeparkar, J.)

(P.V.Kakade, J.)